161 U.S. 519

TRANSCRIPT OF RECORD.

161-519.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~368~~. 87

EDGAR M. GEER, PLAINTIFF IN ERROR,

vs.

THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

FILED FEBRUARY 10, 1892.

(14,974.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 4, 1895.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of errors of the State of Connecticut, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors of the State of Connecticut, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Connecticut and Edgar M. Geer, of the town of New London, in said State of Connecticut, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or
2 statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Edgar M. Geer, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-two.

E. E. MARVIN,
Clerk of the Circuit Court of the United States for the District of Connecticut.

Allowed by—
CHARLES B. ANDREWS,
Chief Justice of Connecticut.

3 To all to whom these presents shall come, Greeting:

Know ye that I, John B. Averill, clerk of the supreme court of the State of Connecticut, 2d judicial dist., in and for the county

of New London, in said State, having inspected the files and records of said court in my custody, do find there remaining on file a certain record in a cause wherein the State of Connecticut was plaintiff and Edgar M. Geer, of New London, New London county, Connecticut, was defendant, in the words and figures following, to wit:

4 Supreme Court of Errors, Second Judicial District, May Session, A. D. 1891.

STATE *vs.* EDGAR M. GEER. } Criminal Court of Common Pleas, New London County, April Session, 1891.

To the police court established and holden within and for the city of New London, in New London county, comes Tracy Waller, assistant attorney of said city, duly appointed and sworn, and on his oath of office complains and information makes that Edgar M. Geer, of said city of New London, since the incorporation thereof, to wit, on the 19th day of October, A. D. 1889, with force and arms, at said city of New London, unlawfully did receive and have in his possession, with the wrongful and unlawful intent to procure the transportation beyond the limits of this State, certain woodcock, ruffled grouse, and quail, killed within this State after the first day of October, A. D. 1889, against the peace and contrary to the form of the statute in such case made and provided.

Whereupon your complainant prays due process in the premises.

Dated at the city of New London, the 9th day of November, A. D. 1889.

TRACY WALLER,
Assistant Attorney of the City of New London.

5 To the sheriff of New London county, his deputy, or either constable of the town of New London, and to either of the sheriffs of New London city, and to any policeman of said city, and to any watchman of said city within said county, Greeting:

By authority of the State of Connecticut you are hereby commanded to arrest the body of Edgar Geer, named in the foregoing complaint, and him forthwith have before the police court for said city, to answer to the foregoing complaint and be thereupon dealt with as the law directs.

Hereof fail not, but of this warrant service and return make according to law.

Dated at the city of New London, the 9th day of November, A. D. 1889.

CHAS. W. BUTLER,
Judge of the Police Court of the City of New London.

To Samuel Boorse, S. J. Geer, F. M. Jacques, Wm. Henry Champlain, Ben. Gresham, Alonzo Geer, J. Latham, Jabez B. Ladd, of the city of New London, in New London county, Greeting:

By authority of the State of Connecticut you are hereby commanded forthwith to appear before the police court for said
6 city, at the police office in said city, to testify to what you know in a certain prosecution pending before said court against Edgar M. Geer, of said city. Fail not to appear as above commanded under penalty of the law.

To any proper officer or indifferent person to serve and return.

Dated at the city of New London, the 9th day of November, A. D. 1889.

TRACY WALLER,
Commissioner of the Superior Court
for New London County.

NEW LONDON COUNTY, *ss:*

CITY OF NEW LONDON, *Nov.* 12, *A. D.* 1889.

Then and there, by virtue of the within warrant, I arrested the body of the within-named Edgar M. Geer, read this complaint and warrant in his presence and hearing, and have him here, in and before the police court for said city, to answer to the within complaint and be thereon dealt with as the law directs, and I duly served the above subpœna upon the witnesses therein named by reading the same in the presence and hearing of each of them.

Attest: GEORGE HAVEN, *Policeman.*

7 *Fees.*

Travel to arrest, — miles at 10 cents per mile.....	$0 10
Arrest.....	50
Travel to court with prisoner, — miles at 25 cents per mile.	25
Summoning witnesses, — readings at 12 cents per reading..	96
Summoning witnesses, — miles travel at 10 cents per mile.	90
Attendance at court with the prisoner, — day.....	50
	$3 21

STATE
vs.
EDGAR M. GEER. } No. —.

NEW LONDON COUNTY, *ss:*

CITY OF NEW LONDON, *Nov.* 12*th*, 1889.

Be it remembered that the within-named Edgar M. Geer, this day, by virtue of the within warrant, brought before the police court within and for said city, and being required to answer to the within complaint, for plea said that he is not guilty; and having inquired into the matter, said court considered and adjudged that he is guilty, and that he pay a fine of $50, together with the costs of prosecution, taxed at $15.82, and stand committed until judgment be complied with.

From this decision the accused appealed to the next session of the criminal court of common pleas, to be held in and for New London county on the second Tuesday of December, A. D. 1889, and it was thereupon ordered by the court that the accused give a bond of $200, with sufficient security for his appearance at
8 said session. Accused, as principal, and William Astheimer, as surety, before the undersigned authority entered into a recognizance to the State of Connecticut in the sum of two hundred dollars, conditioned for his appearance before said court at said term, then and there to answer to the within complaint and abide the order and judgment of the court thereon.

Attest: JOHN McGINLEY, *Clerk.*

The within, above, and foregoing is a true copy from the files and records of the police court of the city of New London.

Attest: JOHN McGINLEY, *Clerk.*

Criminal Court of Common Pleas, New London County, October Session, 1890.

STATE OF CONNECTICUT
vs.
EDGAR M. GEER.

Defendant's Demurrer.

The defendant pleads and says that said complaint and the matters contained therein are insufficient in law, and prays judgment thereof whether he should answer the same or not:

1st. Because the allegations contained therein do not constitute any offence in law.

9 2nd. Because in said complaint it is not alleged that said birds were killed for the purpose of conveying the same beyond the limits of the State.

3rd. Because section 2546 of the General Statutes of Connecticut, under which this complaint is brought, is void and unconstitutional so far as it may be construed to forbid the transporting from the State of Connecticut or having possession of such birds with intent to procure such transportation to another State birds described therein, which birds have been sold to parties in such other State and have begun to move as an article of interstate commerce.

4th. Because it is made to appear in said complaint that the defendant is guilty under said section if such birds were bought by the defendant in the markets of this State as merchandise and commerce and had begun to move as an article of interstate commerce.

THE DEFENDANT,
By R. WHEELER AND H. A. HULL,
His Attorneys.

And the State likewise prays judgment.

THE STATE OF CONNECTICUT,
By SOLOMON LUCAS,
State's Attorney.

Demurrer overruled April 21st, 1891.

CRUMP, *Judge.*

10 At a session of the criminal court of common pleas of New London county, in the State of Connecticut, held at New London, within and for the county of New London, on the second Tuesday of April, A. D. 1891.

Present: Hon. John G. Crump, judge.

STATE OF CONNECTICUT
vs.
EDGAR M. GEER.

In the above-entitled cause the court overrules the demurrer and finds the complaint sufficient, and the accused having declined to answer over, it is therefore considered by the court that the accused is guilty of the crime as charged in the complaint.

The court thereupon sentenced the accused to pay a fine of $25.00 and the costs of this prosecution, taxed at the sum of $—, and stand committed until judgment is complied with.

Judgment dated April 28th, 1891.

Attest: JOHN C. AVERILL, *Clerk.*

Criminal Court of Common Pleas, New London County, April Term, 1891.

STATE OF CONNECTICUT
vs.
EDGAR M. GEER.

Defendant's Notice of Appeal.

To John C. Averill, clerk of court of common pleas:

Notice is hereby given that the defendant in the above-
11 entitled case appeals from the judgment rendered in said case to the supreme court of errors for the second judicial district, to be held at Norwich, on the last Tuesday in May, 1891.

Dated at New London, this 28th day of April, 1891.

EDGAR M. GEER,
Per H. A. HULL, *His Att'y.*

Criminal Court of Common Pleas, New London County, April Term, 1891.

STATE
vs.
EDGAR M. GEER.

Defendant's Appeal.

In the above-entitled cause the defendant appeals from the judgment of said court to the supreme court of errors next to be holden at Norwich, in New London county, within and for the second judicial district, on the last Tuesday of May, A. D. 1891, for the revision of errors which he claims to have occurred in the trial thereof, and for reasons of said appeal he assigns the following:

The court erred—

1st. In holding that the allegations contained in the complaint constitute an offense in law.

2nd. In holding that said complaint was insufficient in the law without an allegation that the birds therein mentioned were killed in this State for the purpose of conveying the same beyond the limits of this State.

12 3rd. In refusing to hold that so much of section 2546 of the General Statutes, under which this complaint is brought, as may be construed to forbid the transportation from this State of the birds therein described, lawfully killed and permitted by the laws of the State to become the subject of traffic and commerce, is unconstitutional and void.

4th. In refusing to hold that so much of said section as may be construed to forbid the receiving and having in possession, with intent to procure the transportation thereof to another State, birds therein described, lawfully killed and permitted by the laws of this State to become the subject of traffic and commerce, is unconstitutional and void.

5th. In holding that the defendant is guilty of an offense under said section if such birds were lawfully killed in this State and were bought by the defendant in the markets of this State as articles of property, merchandise, and commerce, and had begun to move as an article of interstate commerce.

6th. In not rendering judgment for defendant.

THE DEFENDANT,
By R. WHEELER AND H. A. HULL,
His Attorneys.

13 I certify that the foregoing appeal was filed on the 28th day of April, A. D. 1891, and H. A. Hull, of Stonington, and R. Wheeler, of New London, are recognized in the sum of $100, conditioned that the said Edgar M. Geer prosecute said appeal to effect and pay all costs therein if he shall fail so to do, and said appeal is hereby allowed.

Dated at Norwich, this 28th day of April, A. D. 1891.

JOHN C. AVERILL, *Clerk.*

A correct copy of record of the criminal court of common pleas.
Attest: JOHN C. AVERILL, *Clerk.*

A correct copy of record of the supreme court of errors.
Attest: JOHN C. AVERILL, *Clerk.*

14 STATE OF CONNECTICUT:

Supreme Court of Errors, Second Judicial District, May Term, A. D. 1891, to wit, May 26th, A. D. 1891.

And now, the foregoing record in the within-entitled cause having been transmitted to this court at the above-named term thereof for the correction of the errors therein assigned, and the parties having been fully heard before this court, upon the 26th day of May, A. D. 1891, this court finds that there is no error apparent upon the record.

Judgment dated October 26th, A. D. 1891.

Reasons by Seymour, J.

By the court: JOHN C. AVERILL, *Clerk.*

15 Supreme Court of the United States.

EDGAR M. GEER, Plaintiff in Error,
vs.
THE STATE OF CONNECTICUT, Defendant in Error.

Know all men by these presents that we, Edgar M. Geer, Wm. S. Chappell, Henry Schwaner, William Astheimer, M. R. Moran, F. L. Comstock, Chas. L. Klinck, and L. D. Clink, all of the town of New London, are held and firmly bound unto the State of Connecticut in the sum of $500.00, to be paid unto said State; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated this 6th day of January, 1892.

Whereas the above-named Edgar M. Geer has sued out and presented a writ of error to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled cause by the supreme court of errors of the State of Connecticut for the second judicial district:

Now, therefore, the condition of this obligation is such that if the said Edgar M. Geer shall prosecute his writ of error to effect and assume and pay all fines, penalties, and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Approved January 6th, 1892.

16

EDGAR M. GEER. [L. S.]
WM. S. CHAPPELL. [L. S.]
HENRY SCHWANER. [L. S.]
WM. ASTHEIMER. [L. S.]
M. R. MORAN. [L. S.]
F. L. COMSTOCK. [L. S.]
CHAS. L. KLINCK. [L. S.]
L. D. CLINK. [L. S.]

STATE OF CONNECTICUT, } ss:
County of New London, }

Then and there personally appeared Edgar M. Geer, Wm. S. Chappell, Henry Schwaner, Wm. Astheimer, M. R. Moran, F. L. Comstock, Chas. L. Klinck, and L. D. Klink, signers and sealers of the foregoing instrument by them signed, and acknowledged the same to be their free act and deed, and they justified before me under oath in more than three times the amount of the within bond.

WARREN W. CHASE,
Commissioner of the Superior Court for New London County.

Approved by—
CHARLES B. ANDREWS,
Chief Justice of Connecticut.

A correct copy of the original bond on file in this office.
Attest: JOHN C. AVERILL,
Clerk of the Supreme Court of Errors, Second Judicial District, State of Connecticut.

17 All which I have caused by these presents to be exemplified and the seal of the supreme court of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

Seal Supreme Court of Errors, Conn.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Norwich, in said county and State, this 23d day of January, 1892.

JOHN C. AVERILL, *Clerk.*

STATE OF CONNECTICUT, } ss:
New London County, }

Supreme *Superior* Court.

I, David Torrance, a judge of the supreme court of the State of Connecticut, do hereby certify that John C. Averill, whose name is subscribed to the preceding exemplification, is the clerk of the said supreme court in and for the said county of New London, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the said exemplification is the seal of the said supreme court, and that the foregoing attestation is in due form.

Dated at Norwich, this 23d day of January, 1892.

DAVID TORRANCE, *Judge.*

18 [Endorsed:] State of Connecticut, supreme court, New London county, 2d judicial dist. State of Connecticut *vs.* Edgar M. Geer. Exemplified copy of record.

19 STATE OF CONNECTICUT
vs.
EDGAR M. GEER.

Reasons of Appeal.

And for reasons of said writ of error to the Supreme Court of the United States said Edgar M. Geer assigns the following:

The court erred—

1st. In refusing to hold that so much of section 2546 of the General Statutes, under which this complaint is brought, as may be construed to forbid the transportation from this State of the birds therein described, lawfully killed and permitted by the laws of the State to become the subject of traffic and commerce, is unconstitutional and void.

2nd. In refusing to hold that so much of said section as may be construed to forbid the receiving and having in possession, with intent to procure the transportation thereof to another State, birds therein described, lawfully killed and permitted by the laws of this State to become the subject of traffic and commerce, is unconstitutional and void.

3rd. In holding that the defendant is guilty of an offense under said section if such birds were lawfully killed in this State and were bought by the defendant in the markets of this State as articles of property, merchandise, and commerce, and begun to move as an article of interstate commerce.

4th. In not rendering judgment for defendant.

Section 2546 of the General Statutes of the State of Connecticut, under which this prosecution was had, reads as follows:

No person shall at any time kill any woodcock, ruffled grouse, or quail for the purpose of conveying the same beyond the limits of the State, or shall transport or have in possession, with intent to procure the transportation beyond said limits, any of such
20 birds killed within this State. The reception by any person within this State of any such bird or birds for shipment to a point without the State shall be *prima facie* evidence that such bird or birds were killed within the State for the purpose of carrying the same beyond its limits.

EDGAR M. GEER,
Plaintiff in Error,
By his attorney, HADLAI A. HULL.

Endorsed on cover: Case No. 14,974. Connecticut supreme court of errors. Term No., 368. Edgar M. Geer, plaintiff in error, *vs.* The State of Connecticut. Filed February 10, 1892.

Office Supreme Court, U. S.
FILED.
NOV 29 1895
JAMES H. McKENNEY,
CLERK.

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STATE OF CONNECTICUT

vs.

EDGAR M. GEER.

SUPREME COURT OF ERRORS

FOR THE STATE OF CONNECTICUT.

THIRD JUDICIAL DISTRICT.

MAY TERM, 1891.

The following is a copy of the statement of said case and the opinion of the Court thereon as reported in Vol. 61 of the Conn. Reports, page 144 et. seq.

STATEMENT OF THE CASE.

Information in the Police Court of the City of New London, charging that the defendant, "on the 19th day of October, 1889, at the city of New London, unlawfully did receive and have in his possession, with the wrongful and unlawful intent to procure their transportation beyond the limits of this State, certain woodcock, ruffled grouse and quail, killed within this State after the first day of October, 1889."

The case was appealed by the defendant to the Criminal Court of Common Pleas of New London County, and in that Court he demurred to the information. The Court, (Crump J.,) over-ruled the demurrer, and the defendant not answering over, rendered judgment against him. The defendant appealed.

Opinion.

Seymour, J. The General Statutes, §2530, provide that "every person who shall buy, sell, expose for sale, or have in his possession for any purpose, or who shall hunt, pursue, kill, destroy, or attempt to kill, any woodcock, quail, ruffled grouse, called partridge, or gray squirrel, between the first day of January and the first day of October, the killing or having possession of each bird or squirrel to be deemed a separate offense, . . . shall be fined not more than twenty-five dollars," etc.

Section 2546 provides that "no person shall at any time kill any woodcock, ruffled grouse or quail for the purpose of conveying the same beyond the limits of the State; or shall transport, or have in possession with intent to procure their transportation, beyond said limits any of such birds killed within this state. The reception by any person within this State, of any such bird or birds for shipment to a point without the State, shall be prima facie evidence that said bird or birds were killed within the State for the purpose of conveying the same beyond its limits."

The defendant is prosecuted for "unlawfully receiving and having in his possession, on the 19th day of October, 1889, with force and arms and with the unlawful intent to procure the transportation beyond the limits of this State, certain woodcock, ruffled grouse and quail, killed within this State after the 1st day of October, 1889, against the peace and contrary to the form of the statute."

He demurred to the complaint because: "(1) The allegations contained therein do not constitute any offense in law. (2) Because in the complaint it is not alleged that the birds were killed for the purpose of conveying the same beyond the limits of the State."

It will be seen from the sections of the Statutes above quoted that it is unlawful to kill or have in possession for any purpose, woodcock, quail or ruffled grouse between the first day of January and October, and that it is unlawful to kill them at any time for the purpose of conveying them out of the State. It is also unlawful to have them in possession with intent to procure their transportation beyond the limits of the State, if killed between the first day of October and the first day of January, regardless of the question whether they were killed for the purpose of conveying them out of the State.

In 1882 an act was passed as follows:

"Section 1. No person shall at any time kill any woodcock,

ruffled grouse, or quail for the purpose of conveying the same beyond the limits of this State."

"Section 2. No person, corporation or company shall transport or convey beyond the limits of this State any woodcock, ruffled grouse or quail killed within this State, or sell or have in his or their possession any of such birds with the intention to procure the same to be conveyed or transported beyond the limits of this State."

"Section 3. The reception by any person, company or corporation within the limits of this State, of any quail, woodcock or ruffled grouse, for shipment to a point without the State, shall be prima facie evidence that said bird or birds were killed within the State for the purpose of carrying the same beyond the limits of this State."

"Section 4. Any person violating any of the provisions of the preceding sections shall be fined not less than seven nor more than fifty dollars and costs of prosecution."—Public Acts of 1882, ch. 102.

It is evident that under the act as originally passed the complaint would have been good and sufficient. But it is claimed by the defendant that, under the act as revised, no offense is committed unless the birds, by him held for transportation, were killed for the purpose of being conveyed beyond the limits of the state.

He says that the word "such" in the provision of Section 2546 against transporting, or having in possession with intent to procure their transportation beyond said limits, any of such birds killed within the State, means woodcock, ruffled grouse or quail killed for the purpose of conveying the same beyond the limits of the State.

As already suggested, that construction involves a change in the law from the original act, which expressly forbade any person to have in his possession with the intention to procure the same to be transported beyond the limits of the State, any woodcock, ruffled grouse, or quail killed within the State.

It seems to us evident also upon the face of the Statute as revised, that the word, "such" was used only to obviate the necessity of repeating the words, "woodcock, ruffled grouse or quail," and that to carry its force and operation further, so as to include the purpose for which they were killed, would not only be unnatural, but dangerous as a precedent for construction in view of the terms of the old statute. We cannot believe that careful revisers would have undertaken to change the law without some more definite indication of such purpose.

Then again when the words, "such birds" are used in the very next line of the section, it is evident that they are used to take the place only of the words "woodcock, ruffled grouse or quail," as if it read, "the reception by any person within the State of any woodcock, ruffled grouse or quail, for shipment to a point without the State, shall be prima facie evidence that said bird or birds were killed within this State for the purpose of conveying the same beyond its limits." Otherwise we should have the absurd provision that "the reception by any person within the State, for shipment to a point without the State, of any woodcock, ruffled grouse or quail, killed for the purpose of conveying the same beyond the limits of the State shall be prima facie evidence that such birds were killed within the State for the purpose of conveying the same beyond its limits." That is, the fact that they were killed for transportation shall be prima facie evidence that such birds were killed for transportation. The word "such" in both sentences refers to the same antecedent.

It is plain enough that the revisers intended not to change but to condense, the sections of the original statute, and the language should be construed in the light of such intention. We conclude therefore that the complaint is sufficient.

We see nothing in the decision in Commonwealth vs. Hall 128 Mass. 410, to which the defendant refers us, inconsistent with our conclusion. The object of the act therein involved was to protect the game in that commonwealth and not in another. And a construction confining its force to birds killed therein was to be expected in the absence of controlling words to the contrary. All the reasoning in that case may certainly be held sound without impuning the reasoning upon which we arrive at our conclusion, in this.

But in this view of the matter another question arises. The defendant further demurred to the complaint. "(3) Because section 2546 of the General Statutes is unconstitutional and void, so far as it may be construed to forbid the transportation from the State, or having in possession with intent to procure such transportation to another State, birds described therein, which birds have been sold to parties in such other state, and have begun to move as an article of interstate commerce. And (4) because it is made to appear in said complaint that the defendant is guilty under said section if such birds were bought by the defendant in the markets of this State, as merchandise and commerce and had begun to move as an article of commerce."

In short the defendant insists that the statute, as construed by us, is unconstitutional as restricting interstate commerce, and refers to

Robbins vs. Shelby County Taxing District, 120, U. S. R. 489; The Daniel Ball vs. United States, 10 Wall 557; Hannibal and St. Joseph R. R. Co. vs. Husen 95 U. S. R. 465; State vs. Saunders 19 Kan. 127; Territory vs. Evans 23 Pacific reporter 115; Territory vs. Nelson id. 116; State ex rel. Cormin vs. Ind. and Ohio Oil Gas and Mining Co., 22 North Eastern Reporter 778; American Express Company vs. The People 24 id. 759.

In State vs. Saunders Supra, the Court says it seems to be finally settled, among other things, that no state can pass a law which will directly interfere with the free transportation from one state to another, or through a state, of anything which is or may be a subject of interstate commerce. That a law which prohibits the catching and killing of prairie chickens may be valid, although it may indirectly prevent the transportation of such chickens from the State to any other state; but that a law which allows prairie chickens to be caught and killed and thereby to become the subject of traffic and commerce, and, at the same time, directly prohibits their transportation from the state, is unconstitutional and void.

Without stopping to consider the construction which was given to the constitutional provision under discussion by the early commentators, except to suggest, in the language of Judge Story, (2 Story's Com. on the Constitution, 511) that a very material object of its adoption was the relief of the states which export and import through other states, from the levy of improper contributions on them by the latter, an object which was shown to be important by the experience of the states during the confederation period, we feel constrained to hold the provision of the statute to be constitutional.

It being conceded that the state, under its general police power may lawfully prohibit the killing of the game birds in question, it may, of course, control such killing and the times and purposes thereof. It may lawfully enact that they may be killed and sold and held for sale only for domestic consumption. The State in the exercise of its power, instead of prohibiting the killing altogether, permits the person killing them to acquire only a qualified right in them, namely, the right to appropriate them to his own use, and the right to sell or transport them for domestic use.

The birds in question never became articles of commerce within the meaning of the term contended for by the defendant. They became private property of a qualified character. The law limited the purposes for which they might be killed and become private

property. The difference between property of this sort and the ordinary private property of commerce is obvious.

The apparent assumption of the Kansas Court, above referred to, that game which the law allows to be caught and killed, thereby necessarily becomes the subject of traffic and commerce, meaning interstate commerce, appears to us unsound. If the proposition were true then the conclusion that a state law interfering with such commerce would be unconstitutional might pass unquestioned. But we cannot acquiesce in a decision which would deny the power of the state to limit the right to kill, sell and hold its own game by any provision short of an absolute prohibition, without thereby transforming it into that species of property the transportation of which from the state it is unconstitutional to prohibit.

There is no error in the judgment appealed from.

In this opinion the other judges concurred.

property. The difference between property of this sort and the ordinary private property of commerce is obvious.

The apparent assumption of the Kansas Court, above referred to, that game which the law allows to be caught and killed, thereby necessarily becomes the subject of traffic and commerce, meaning interstate commerce, appears to us unsound. If the proposition were true then the conclusion that a state law interfering with such commerce would be unconstitutional might pass unquestioned. But we cannot acquiesce in a decision which would deny the power of the state to limit the right to kill, sell and hold its own game by any provision short of an absolute prohibition, without thereby transforming it into that species of property the transportation of which from the state it is unconstitutional to prohibit.

There is no error in the judgment appealed from.

In this opinion the other judges concurred.

Office Supreme Court, U. S.
FILED.
OCT 25 1895
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87

BRIEF OF PLAINTIFF IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1895.

EDGAR M. GEER, PLAINTIFF IN ERROR.

vs.

THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

HADLAI A. HULL,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

EDGAR M. GEER, PLAINTIFF IN ERROR,

vs.

THE STATE OF CONNECTICUT.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

BRIEF OF PLAINTIFF IN ERROR.

I.

STATEMENT OF THE CASE.

This is a prosecution, brought in the State of Connecticut, under its game law, charging the defendant with having in his possession, certain game birds, with intent to procure the transportation of them beyond the limits of the State. The record is not a full statement of the history of the case in Court. The case on other pleadings has been once tried to a jury who disagreed, and by special arrangement between the State and the accused and for the purpose of raising the questions herein stated, the pleadings were reformed and the demurrer interposed in its present form, which was overruled.

The birds in question are conceded as a matter of fact, by the State, to have been in transit from New London, Connecticut to the city of New York, in the possession of the defendant, and were seized by the officers of the law on board one of the boats of the Norwich and New York Transportation Company at said city of New London. They were bought in the open markets in said city of New London, and were in course of shipment to the markets of New York, under contract of sale.

The question presented in this case is, Can a State, after permitting the killing of game birds, and after allowing them to be bought and sold in the markets of the State, impose the restriction that they shall not be transported beyond the limits of the State? or in other words, Can a state, by legislative enactment constitute game birds an article of domestic commerce, as distinguished from, and as prohibiting interstate commerce in them?

II.

Specification of Errors.

It is claimed that error in this case has been committed by the courts of the State of Connecticut in the following particulars, as set forth on page 9 of the Record:

1. In refusing to hold that so much of section 2546 of the General Statutes of Connecticut, herein after quoted, under which this complaint is brought, as may be construed to forbid the transportation from this State of the birds therein described, lawfully killed and permitted by the laws of this State to become the subject of traffic and commerce, is unconstitutional and void.

2. In refusing to hold that so much of said section as may be construed to forbid the receiving and having in possession with intent to procure the transportation thereof to another state, birds therein described, lawfully killed and permitted by the laws of this State to become the subject of traffic and commerce is unconstitutional and void.

3. In holding that the defendant is guilty of an offense under said section if such birds were lawfully killed in this State and were bought by the defendant in the markets of this State, as articles of property, merchandise and commerce and had begun to move as an article of interstate commerce.

III.

Brief of the Argument.

To conveniently and properly present the question arising in this case, it is proper to quote all the statute law of the State of Connecticut, bearing upon it.

The complaint is based on section 2546 of the Connecticut Statutes, revision of 1888, which reads: "No person shall at any time kill any woodcock, ruffled grouse, or quail, for the purpose of conveying the same beyond the limits of the State; or shall trans-

port, or have in possession with intent to procure the transportation beyond said limits, any of such birds killed within this State. The reception by any person within this State of any such bird or birds for shipment to a point without the State, shall be *prima facie* evidence that said bird or birds were killed within the State, for the purpose of carrying the same beyond its limits."

Section 2530 of said statutes is quoted here, as it has an important bearing upon the case. It reads as follows: "Every person who shall buy, sell, expose for sale, or have in his possession for any purpose, or who shall hunt, pursue, kill, destroy, or attempt to kill, any woodcock, quail, ruffled grouse, called partridge, or gray squirrel, between the first day of January and the first day of October, the killing, or having in possession of each bird or squirrel to be deemed a separate offense; . . . . shall be fined not more than twenty-five dollars," etc.

The complaint, page 2 of the Record, stripped of formality, alleges that the defendant "on the 19th day of October, 1889 . . . . did receive and have in his possession, with the wrongful and unlawful intent, to procure the transportation beyond the limits of this State, certain woodcock, ruffled grouse and quail, killed within this State, after the first day of October, A. D., 1889."

There is no claim by the State that these birds were not lawfully killed, as they must have been killed between the 1st and 19th days of October. It is not alleged or claimed by the State that the killing was in violation of that part of section 2546, which prohibits the killing "for the purpose of conveying the same beyond the limits of the State." Section 2530 prohibits the buying, selling or exposing for sale, between the 1st of January and the 1st of October. "To buy, sell, or expose for sale" between October 1st and January 1st following, when all the acts complained of were done, was clearly lawful. The last sentence in section 2546 establishing a rule of evidence from "the reception by any person . . . . for shipment to a point without the State" does not apply here because that refers only to the killing, and not to the buying and selling. The killing in this case was lawful, as appears by the complaint, so that the word, "receive" in the complaint adds nothing to it. This eliminates from the case any claim that the State might have to the birds by reason of the unlawful killing of them.

Whether the unlawful killing constituted an indispensable element in the complaint, was discussed in the State Court, and

forms no part of the inquiry here. The question here, briefly stated is, Has a state such a proprietary interest in game that it can permit the killing and selling, in open markets, and impose the restriction that they cannot be sold, to be taken out of the State? Or in other words, has the State such proprietary interest in game, that it can constitute game an articles of commerce within the State, and forbid its becoming an article of interstate commerce?

The defendant insists that the State has no such power and that when the State permits an article to become a subject of commerce, it cannot restrict it, territorially, without conflicting with Article I, Section 8 of the Constitution of the United States.

The defendant concedes that a state may prohibit the killing of game; that it may permit the killing of game at specified seasons and prohibit it at all others; that it may allow the killing and prohibit the buying and selling of game and, having prohibited the buying and selling, may prohibit the exportation of game.

This question is discussed by the Supreme Court of the State of Connecticut, in its decision of this case, in volume 61 of the Connecticut Reports beginning on page 151. The reasoning of that Court is contained in the following quotation: "It being conceded that the State, under its general police power, may lawfully prohibit the killing of the game birds in question, it may, of course, control such killing and the times and purposes thereof. It may lawfully enact that they may be killed and sold and held for sale only for domestic consumption. The State in the exercise of its power, instead of prohibiting the killing altogether, permits the person killing them to acquire only a qualified right in them, *namely, the right to appropriate them to his own use, and the right to sell or transport them for domestic use.*

"The birds in question never became articles of commerce within the meaning of the term contended for by the defendant. They became private property of a qualified character. The law limited the purposes for which they might be killed and become private property. The difference between property of this sort and the ordinary private property of commerce is obvious."

The defendant contends that there cannot be articles of state commerce or "the right to sell or transport them for domestic use," which may not become articles of interstate commerce. From October 1st to January 1st following, the killer and the buyer and seller, exercised the common law right, and the State does

not attempt to retain any ownership in itself, as was done in the case of State of Alabama vs. Harrub, 95 Ala. 187, 4 Interstate Com. Rep. 99.

The Supreme Court of Alabama, with the strenuous effort on the part of the State to retain ownership in property in specie finds no support, by precedent for its position.

This Court said in Robbins vs. Shelby Taxing District, 130 U. S. 489, "the negotiation of sales of goods which are in another state for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce." If negotiation for sale of an article constitutes it an article of commerce, the defendant claims that the position of the Supreme Court of Connecticut is untenable, in holding that these birds, "never became articles of commerce within the meaning contended for by the defendant." The defendant contends there is no such shadowy, uncertain, undefinable state where an article is for some purposes an article of commerce, and for others is not. In the Alabama case, Ala. vs. Harrub, supra, the oysters in shell remain the property of the State and the possessors' right was a bare license, so that the State had a right to reclaim and retake its property. In the case of American Express Co. vs. People 133 Ill. 649, which the State has heretofore relied upon, the Court says, "The killing of quail during the months of October and November was permitted, but not for sale, not to go upon the market as an article of commerce but for the mere use of the person who killed the birds."

The case of State vs. Saunders 19 Kansas 127 is in pari passu with the case at bar. The Court in that case said, "a law which prohibits the catching and killing of prairie chickens, may be valid, although it may indirectly prevent the transportation of such chickens from the State to any other state; but a law which allows prairie chickens to be caught and killed and thereby to become the subject of traffic and commerce, and at the same time directly prohibits their transportation from the State to any other state, is unconstitutional and void."

In the case of Bennett vs. American Express Co. 83 Me. 236, the Court made use of the following language: "It had lawfully commenced to move as an article of commerce from one state to another. From that moment it became the subject of interstate commerce, and, as such, was subject only to national regulation

and not of the police power of the State. The same is unquestionably true in relation to whatever agency or instrumentality may be used as the means of transporting such commodities as may lawfully become the subject of purchase, sale or exchange, under the commerce clause of the Constitution of the United States. The transportation of the subject of interstate commerce, where it is such as may lawfully be purchased, sold or exchanged, is without doubt a constituent of commerce itself, and is protected by and subject only to the regulation of Congress."

From the case of Welton vs. Missouri 91 U. S. 347, Justice Field delivering the opinion, the following extracts are taken: "Commerce is a term of the largest import. It comprehends intercourse for the purposes of trade in any and all its forms, including the transportation, purchase, sale and exchange of commodities between the citizens of our country and the citizens or subjects of other countries, and between the citizens of different states. The power to regulate it embraces all the instruments by which such commerce may be conducted. So far as some of these instruments are concerned, and some subjects which are local in their operation, it has been held that the states may provide regulations until Congress acts with reference to them, but where the subject to which the power applies is national in its character, or of such a nature as to admit of uniformity of regulation, the power is exclusive of all State authority." . . . .

"The power of the State to exact a license tax of any amount being admitted, no authority would remain in the United States or in this Court to control its action, however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating state legislation, favorable to the interests of one state and injurious to the interests of other states and countries, which existed previous to the adoption of the constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the states."

This Court, Mr. Justice Lamar delivering the opinion, in the case of Kidd vs. Pierson, 128 U. S. 1 said: "The proposition, supposing the goods were once lawfully called into existence, it would then be beyond the power of the State either to forbid or impede their exportation, may be conceded."

In the case of Idaho vs. Evans 2 Idaho 634, the Court said:

"It is clearly settled and conceded by all, that the above provision of the Constitution [Art. I, Sec. 8, U. S. Constitution] confers upon Congress the exclusive power to regulate commerce between the states, and any statute which attempts to prohibit the shipment into or out of a state of any lawful commodities or articles of commerce or trade is in conflict therewith, and necessarily void."

The constitutional question is forced into this case, whether the defendant was engaged in traffic, or intended to consume the birds himself, because the "intent to procure transportation beyond the limits of the State" is the gravamen of the offense alleged. Transportation is the very keystone of interstate commerce, without which the whole structure falls. This Court in Hannibal and St. Jos. R. R. Company vs. Husen 95 U. S. 465 said: "Transportation is essential to commerce, or rather, it is commerce itself, and every obstacle to it or burden laid upon it by legislative authority is regulation."

HADLAI A. HULL, *Counsel.*

OCT 30 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. ~~368~~ 87.

EDGAR M. GEER,

Plaintiff in Error,

vs.

STATE OF CONNECTICUT,

Defendant in Error.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

BRIEF

For the State of Connecticut, Defendant in Error.

SOLOMON LUCAS,
STATE'S ATTORNEY, } *of Counsel.*

NORWICH:
THE BULLETIN CO., 85 MAIN STREET.
1895.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. ~~889~~ 87.

EDGAR M. GEER, Plaintiff in Error,

vs.

THE STATE OF CONNECTICUT, Defendant in Error.

IN ERROR TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

Brief of Counsel for the State of Connecticut.

STATEMENT.

The plaintiff in error was brought before the Police Court of the City of New London, in the State of Connecticut, upon a complaint filed by its Assistant Attorney, charging him with the crime of having on the 19th day of October, A. D. 1889, unlawfully received and in his possession, with the wrongful and unlawful intent to procure the transportation beyond the limits of that State, certain woodcock, ruffled grouse and quail, killed within that State after the first day of October, A. D. 1889.

ASSIGNMENTS OF ERROR.

The 1st and 6th assignments of error in the Supreme Court of Errors of the State of Connecticut are general assignments of error and were not considered by that Court.

The 4th assignment of error in this Court is of the same character.

The first three assignments of error found on page 9 of the Record are the same as the 3rd, 4th and 5th on page 6.

Each of the three assignments of error assumes as facts that which is not alleged in the complaint.

The plaintiff in error cannot give character to the charge brought against him in that way. If he desired to raise the questions he seeks to by such statements he should have done it, either by a plea setting forth what he claimed the facts to be and relied on as a defense, or raised the questions on a trial on a plea of not guilty.

DEMURRER.

The demurrer in the trial Court was subject to the same objection. It is no part of the office of a demurrer to raise questions of fact *dehors* the record, and any attempt of the kind will not be noticed by the Court. In this case the plaintiff in error should have confined the reasons for his demurrer to the allegations contained in the complaint—and as they charge a crime, he could only claim that by reason thereof the statute was rendered unconstitutional.

This case is open to the objection that it is a case made up for the occasion, and not one properly arising upon the record.

THE COMPLAINT.

The complaint simply charges in substance that the plaintiff in error had game in his possession, killed within the State, with the unlawful intent to transport it beyond the limits of the State.

POINTS.

I.

Merely having property in one's possession, with an intent to transport it beyond the limits of a State, does not make it a subject matter of interstate commerce within the meaning of the term contended for by the plaintiff in error.

U. S. *vs.* E. C. Knight Co., 156 U. S., 1, 12 15.
Kidd *vs.* Pearson, 128 U. S., 1, 20 24.
Coe *vs.* Enos, 116 U. S., 517.

II.

The law in question relates only to game killed within the State, and is of that class of legislation whereby states seek to regulate the killing of game and its consumption.

The State of Connecticut has prohibited the killing of such game between the first day of January and the first day of October following in each year.

Gen. Stat., 1888, § 2530.

And as above stated it prohibits anyone having such game in his possession *at any time with an intent to transport it beyond its limits.* It seeks by its game laws to preserve game from destruction and to limit its consumption to those within its territorial limits.

It is believed that every State in the Union has its game laws, and that it is a matter that does not concern the government of the United States, and with which, fortunately, it has nothing to do. If it had it would hardly find time to give its attention to anything else.

U. S. *vs.* E. C. Knight Co., 156 U. S., 1, 13 14.
Kidd *vs.* Pearson, 128 U. S., 1, 20 21.

III.

No one has any property in such birds in their wild and unrestrained condition, and the right of the law making power to restrict or to prohibit the taking of such animals *feræ naturæ* as go under the denomination of game, has always been recognized.

Shars. Black. Com., Book 2, p. 403.

And the State of Connecticut has exercised that power unquestioned since the year 1842.

Pub. Acts, 1842, p. 35, and subsequent Statutes.

IV.

By the law of the State of Connecticut such game cannot be the subject of absolute ownership. No one can acquire other than a qualified property therein, and is deprived of the right to transport it beyond the State.

State *vs.* Geer, 61 Conn., 144.

It being unlawful, for one to kill such game or to have it in his possession, for the purpose of transporting it beyond the limits of the State, it follows that it could not become a subject matter of interstate commerce, and the law complained of is not in violation of the Constitution of the United States or any law of Congress relative thereto.

V.

It is submitted that the State of Connecticut had absolute control of the subject matter of this suit, and that no one can acquire within its limits any right to game killed within that State other than it by law permits, or do anything with such

game that it by law prohibits. Its power in these respects is supreme. It is a matter of internal police regulation.

U. S. *vs.* E. C. Knight Co., 156 U. S., p. 1.
Kidd *vs.* Pearson, 128 U. S., p. 1.
Coe *vs.* Enos, 116 U. S., 517.
Licenso cases, 5 Howard, 630.
Phelps *vs.* Racy, 60 N. Y., 10.
Allen *vs.* Wyckoff, 48 N. J., 93.
Magner *vs.* The People, 97 Ills., 333.
Am'can Ex. Co. *vs.* People, 133 Ill., 649 655 657.
State *vs.* Randolph, 1 Mo., 15, 17, 158.
Cooley's Blackstone, Book 4, 1174.

SOLOMON LUCAS,
of Counsel for the State of Connecticut,
Defendant in Error.